IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2005

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THE HONOURABLE MR JUSTICE P. SATHASIVAM
AND
THE HONOURABLE MR JUSTICE S.K. KRISHNAN

HABEAS CORPUS PETITION NO.1266 OF 2004

A. Kannan ... Petitioner

Vs.

1. The State of Tamil Nadu
   rep. by the Secretary to the
   Government, Public (SC)
   Department, Fort St. George
   Chennai - 600 009.

2. The Union of India
   rep. by the Secretary to the
   Government, Ministry of
   Finance, Department of Revenue
   New Delhi.

3. The Superintendent of Central Prison
   Central Prison, Madurai. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus calling for the records relating to the detention order in G.O.No.S.R.1/528-22/2004 dated 24.5.2004 passed by the first respondent herein, quash the same and direct the respondent to produce the body of the person of the detenu namely A. Kannan, Son of Arumugam before this Court, now detained under Section 3(1)(ii) of the COFEPOSA ACT in the Central Prison, Madurai and set him at liberty.

For Petitioner : Mr. S. Palanikumar
For R1 & R3 : Mr. Kandasamy, Addl. Public Prosecutor
For R2 : Mrs. Vanathi Srinivasan, ACGSC

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O R D E R

(Order of the Court was made by P. SATHASIVAM, J.)

The detenu, who was detained under Section 3(1)(ii) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) challenges his detention order dated 24.5.2004 passed by the first respondent.

2. Heard the learned counsel for the petitioner as well as the respondents.

3. Though several points have been raised questioning the impugned order of detention, the learned counsel appearing for the petitioner at the first and foremost contended that though by order dated 14.5.2004, the remand of the detenu was extended upto 28.5.2004, a copy of the said remand extension order dated 14.5.2004 was not furnished to the detenu. It is also the claim of the learned counsel for the petitioner that inasmuch as the Detaining Authority has relied on the above document, while passing the order of detention, failure to supply the copy of the remand order vitiate the impugned order of detention. While elaborating the above said contention, the learned counsel for the petitioner has brought to our notice, Sl.No.33 in the List of Documents supplied to the detenu, which specifically states that the petition dated 14.5.2004 was filed before the Chief Judicial Magistrate, Coimbatore for extension of remand of the detenu and order of the Court in English with Tamil translation. The above referred index portion makes it clear that there was not only a petition dated 14.5.2004 for seeking extension of remand but it also shows that an order of the Court was passed extending the period of remand upto 28.5.2004.

4. On the other hand, though copy of the petition dated 14.5.2004 was supplied to the detenu, the order extending the remand upto 28.5.2004 was not supplied. In this regard, the learned counsel for the petitioner by drawing our attention to the specific reference made in Ground No.1 (xxviii) would submit that inasmuch as the Detaining Authority has relied on the order dated 14.5.2004 extending the remand upto 28.5.2004, the detenu is entitled to a copy of the same in order to make an effective representation. Learned counsel for the petitioner also points out that in paragraph-5 of the Grounds of Detention, the Detaining Authority-State Government has specifically stated that they are very well aware that the detenu was a remand prisoner in the Central Prison. The same makes it clear that the Detaining Authority was aware of the fact that the detenu was arrested on 1.5.2004 and remanded upto 14.5.2004 and thereafter, his remand was extended upto 28.5.2004.

5. Though the learned Additional Public Prosecutor by drawing our attention to a letter D.No.2074/2004, dated 14.5.2004 of the Chief

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Judicial Magistrate, Coimbatore to the Additional Chief Judicial Magistrate (Economic Offences), Madurai submitted that the second paragraph of the said letter makes it clear that the detenu is in custody and he has to appear before the Chief Judicial Magistrate (Economic Offences), Madurai on 28.5.2004, which we suppose that he was in prison at the relevant time. In the absence of a copy of the order dated 14.5.2004 extending the remand upto 28.5.2004, we are unable to presume in such a manner as requested by the learned Additional Public Prosecutor., more particularly, when the Detaining Authority was very much aware of the fact that the detenu was a remand prisoner and relied on the order dated 14.5.2004 extending his remand upto 28.5.2004.

6. In this regard, learned counsel appearing for the petitioner very much relied on a Division Bench decision of this Court dated 24.9.2003 rendered in H.C.P.No.2630 of 2002. While considering a similar question, the Division Bench has observed that the final remand order remanding the accused is a relied upon document and the same cannot be claimed as mere a reference document. The Division Bench after holding that the remand extension order is a very essential document and a relied upon document, for the non supply of such document, quashed the detention order. The Division Bench has further held that in such circumstance, the detenu need not show any further prejudice. Similar view has been expressed in M. BALAKRISHNAN VS. STATE, BY THE SECRETARY TO GOVERNMENT, ETC., reported in 1999-2-L.W.(Crl.) 782 as well as in H.C.P.No.1231 of 2004 dated 4.4.2005 (P.S.J., & S.K.K.J.,)

5. In the light of above discussion, we accept the contention raised by the learned counsel for the petitioner and the Habeas Corpus Petition is allowed. The order of detention dated 24.5.2004 is set aside. The detenu, namely, A. Kannan is directed to be set at liberty forthwith from the custody unless he is required in connection with any other case.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Secretary to the Government
The State of Tamil Nadu
Public (SC) Department,
Fort St. George
Chennai - 600 009.

2. The Secretary to the Government
The Union of India
Ministry of Finance,
Department of Revenue
New Delhi.

3. The Superintendent of Central Prison
Central Prison, Madurai.
(in duplicate for communication to detenu).

4. The Joint Secretary to the
Government of Tamil Nadu
Public Law & Order Department
Fort St. George
Chennai - 9.

5. The Public Prosecutor,
High Court, Madras.

6. The Sub-Asst. Registrar,
COFEPOSA, High Court,
Madras.

+ 1 CC to Mr.S.Palanikumar, Advocate SR NO 15972

+ 1 CC to Mrs.Vanathi Srinivasan, Advocate SR NO 16448

H.C.P.NO.1266 OF 2004

04.04.2005

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